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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Daniel Peyrat

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EXAMINER

BEKKER, KELLY JO

ART UNIT

PAPER NUMBER

1794

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,817	<b>Applicant(s)</b> PEYRAT, DANIEL	
	<b>Examiner</b> Kelly Bekker	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 12 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Amendments made February 25, 2009 have been entered.

Claims 1, 3-7 and 12 remain pending.

**Note:** The Examiner of this application has changed. Please direct all further correspondence to Examiner Bekker.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2009 has been entered.

### ***Claim Rejections - 35 USC § 112***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The previous 112 second paragraph rejections of claims 1, 5-7 and 12 due to the recitation of a "deep frozen product" and antecedent basis have been withdrawn in light of applicant's amendments made February 25, 2009. The following 112 second paragraph rejections remain or were necessitated by applicant's amendments.

Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites, "part-baking of the pastry dough is carried out for a period in the range of 30-70% of the normal total baking time of the pie piece". It is unclear as to what the "normal total baking time of the pie piece is" and thus it is unclear as to what time the dough is partially baked for.

Claims 3-7 recite, "A method according to claim 1 [5] characterized in...". The term "characterized in" is not definitive and is thus unclear. by using the term "characterized in" it is unclear as to if the claimed method must have the claimed features or if the claimed method is usually, but not necessarily always, characterized with the claimed properties. It is suggested that applicant utilize the term "wherein" as a substitution for "characterized in".

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: Claim 1 contains a typographical error. Claim 1 recites, "depositing the filling on the part-backed pie base". It is believed applicant intended to recite "part-baked" instead of "part-backed". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The 103(a) rejection of claims 1, 3, 4 and 12 as being unpatentable over Fournet et al. (US 4251549) has been withdrawn in light of applicant's amendments made February 25, 2009.

The 103(a) rejection of claims 5-7 as being unpatentable over Fournet et al (US 4251549) in view of Alden et al (US 5894028) has been withdrawn in light of applicant's amendments made February 25, 2009.

Claims 1, 3, 4, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (US 5620731) in view of Schaible II et al (US 6365210 B1).

McKee teaches a method for par-baking a foodstuff (abstract). Par-baking is a process of partially baking, thus McKee teaches of a process of partially baking a foodstuff. McKee teaches that the foodstuff is a pastry by teaching the food item includes pizza (Column 1 lines 6-11 and Column 3 lines 26-32). Pastry is defined by Random House Unabridged Dictionary 2009 as any item of food of which such dough

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forms an essential part. McKee teaches that the pastry dough is prepared and partially cooked in a pan with a top or counter mold piece having perforations to allow steam to be evacuated during baking (Column 3 lines 1-32, Column 5 lines 40-55, and Column 6 lines 13-17). McKee teaches that a filling or topping is prepared and deposited on the partially baked dough base prior to or after freezing (Column 7 lines 53-59). McKee teaches that the product is stored (Column 7 lines 53-59). McKee teaches that the later full bake cooking time depending on the type and quantity of the topping more than the need to complete baking of the par-baked product (Column 8 lines 4-12).

McKee is silent to the dough as shaped in a mold and to the mold as the baking pan as recited in claim 1, to the dough and filling as deep-frozen as recited in claim 1, to packaging the deep frozen product as recited in claim 1, and to the percentage range of normal baking time that the part-baking is carried out as recited in claim 3.

Schaible II et al (Schaible) teach of a partially baked pastry dough (Column 1 lines 11-15). Schaible holding pan for baking can also be used as a transport and molding try to form the desired pizza shape (Column 18 lines 50-54 and Column 15 lines 21-64). Schaible teaches that the partially baked product deep frozen and packaged for storage (Column 12 lines 33-61).

Regarding the dough as shaped in a mold, it would have been obvious to one of ordinary skill in the art at the time the invention was made to shape the dough in a mold in order to form final products of the desired shape that were consistent. To mold dough was well known in the art as taught by Schaible. To do so would have been obvious and within the routine ingenuity of one of ordinary skill in the art at the time the invention was made.

Regarding the mold as the baking pan it would have been obvious to one of ordinary skill in the art at the time the invention was made for the mold to also be used as the transport and baking pan as taught by Schaible. One would have been motivated to use the mold as the transport and baking pan so that the dough could be easily transported from molding and other processing steps into the oven, so that the dough would not be contaminated by processing belts and conveyors, and so that the dough did not dirty or necessitate cleaning of other processing equipment. To do so

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would have been obvious and within the routine ingenuity of one of ordinary skill in the art at the time the invention was made.

Regarding the dough and filling as deep-frozen it would have been obvious to one of ordinary skill in the art at the time the invention was made to deep freeze the product as was commonly done in the art as shown by Schaible, in order to quickly freeze the product so that it could be stored for an extended period of time. To do so would have been obvious and within the routine ingenuity of one of ordinary skill in the art at the time the invention was made.

Regarding the packaging the deep frozen product it would have been obvious to one of ordinary skill in the art at the time the invention was made to package the deep frozen product as was commonly done in the art as shown by Schaible in order to prevent contamination of the product during storage. To do so would have been obvious and within the routine ingenuity of one of ordinary skill in the art at the time the invention was made.

Regarding the part baking as carried out for 30-70% of the normal baking time of the dough as recited in claim 3, as stated above it is unclear as to what time period 30-70% of the normal baking time is. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made for baking times to vary depending on the actual product characteristics, such as product ingredients and thickness of the dough. To chose a par-baking time would have been a result effective variable depending on the product characteristics and would be readily determined by one of ordinary skill in the art.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (US 5620731) in view of Schaible II et al (US 6365210 B1), further in view of McDonald et al (US 5256432).

McKee in view of Schaible teach of a method of preparing dough product as discussed above. McKee teaches that a filling or topping is prepared and deposited on the partially baked dough base prior to or after freezing (Column 7 lines 53-59). The

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references are silent to the filling as molded and deep frozen before being deposited on the partially baked dough as recited in claims 5-7.

McDonald et al (McDonald) teaches of a pizza topping disk for par baked dough (abstract and Column 5 lines 20-33). McDonald teaches that the topping or filling disk provides for several advantages including a more consistent final product, convenience, closer control over the final product, and reduced production time (Column 2 lines 28-53). McDonald teaches that the disk is molded for the pizza dough or base size (Column 3 lines 31-44). McDonald teaches that the pizza disk may be frozen to provide for prolonged storage (Column 5 lines 17-19).

Regarding the filling as molded before being deposited on the partially baked dough, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mold the pizza filling as taught by McDonald. One would have been motivated to mold the filling so that it would fit on the pizza dough. To use a commonly known shaping method would have been obvious and within the routine ingenuity of one of ordinary skill in the art at the time the invention was made.

Regarding the filling as deep frozen before being deposited on the partially baked dough it would have been obvious to one of ordinary skill in the art at the time the invention was made to deep-freeze the filling before depositing it on the partially baked dough so that the filling could be quickly frozen and stored for an extended period of time before it was placed on the pizza dough. To do so would have been obvious and within the routine ingenuity of one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-7 and 12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
Primary Examiner  
Art Unit 1794

/Kelly Bekker/  
Examiner  
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